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ATTORNEYS FOR SECURED CREDITOR
CV ANTHONY II, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, ITS
ASSIGNEES AND/OR SUCCESSORS

UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re:

DOYLE D. HEATON AND MARY K.
HEATON,
Debtors.

Bk. No. 10-40297 – EDJ

A.P. No.

Chapter 11

CV ANTHONY II, LLC, A CALIFORNIA
LIMITED LIABILITY COMPANY, ITS
ASSIGNEES AND/OR SUCCESSORS

Plaintiff

vs.

DOYLE D. HEATON AND MARY K.
HEATON,

Defendants.

**COMPLAINT FOR NON-DISCHARGE OF
DEBT; ACCOUNTING; IMPOSITION OF
CONSTRUCTIVE TRUST AND
EQUITABLE LIEN**

Comes Now Plaintiff, CV ANTHONY II, LLC, A CALIFORNIA LIMITED LIABILITY
COMPANY, ITS ASSIGNEES AND/OR SUCCESSORS (“**Plaintiff**”) and alleges as follows:

1 Debtors, and such interest is subject to the claims of Plaintiff in this Complaint, either by virtue
2 of MARY HEATON'S obligations as part of the debtors' marital community, or because of her
3 community property claims in and to the Assets, MARY HEATON'S interest in the Assets
4 should be subject to any judgment entered in favor of Plaintiff in these proceedings.

5 **FACTS COMMON TO ALL CAUSES OF ACTION**

6 8. In or about January 2000, DOYLE HEATON and Centennial Homes, Inc., a
7 California corporation (hereafter "**Centennial**"), as predecessor in interest to Plaintiff, formed
8 Atherton Ranch, LLC, a California limited liability company (hereafter "**Atherton Ranch**
9 **LLC**") to develop a residential subdivision project in Novato, Marin County, California
10 (hereafter "**Atherton Ranch Project**"). DOYLE HEATON, through his ownership and control
11 of Mardel LLC, served as the managing member of Atherton Ranch LLC and was exclusively
12 responsible for managing the financial affairs of Atherton Ranch LLC and the Atherton Ranch
13 Project. As the manager of the Atherton Ranch Project, DOYLE HEATON owed Plaintiff a
14 fiduciary duty of utmost honesty and integrity in the management of the Atherton Ranch Project
finances.

15 9. In 2007, DOYLE HEATON, in his fiduciary capacity as the manager of the Atherton
16 Ranch Project, provided Plaintiff with a purported final accounting for the Atherton Ranch
17 Project costs and income due to the respective owners, DOYLE HEATON and Plaintiff disputed
18 DOYLE HEATON's accounting methodology, particularly an unauthorized and improper
19 management fee claimed by DOYLE HEATON, interest charges to the Atherton Ranch LLC
20 for DOYLE HEATON's personal debt service, unauthorized cash payments to third parties, and
21 the sale of a home within the Atherton Ranch Project to DOYLE HEATON's son at a
22 substantial discount.

23 10. In October 2007, Plaintiff provided DOYLE HEATON with its own accounting
24 recap for the project costs and the distribution due to DOYLE HEATON and Plaintiff. At that
25 time, Plaintiff contended that DOYLE HEATON was taking, or had taken, approximately \$2.2
26 million more than he was due under the terms of the Atherton Ranch LLC Operating Agreement.
27 Plaintiff has since discovered that this amount is approximately \$2,347,912.

28 11. Plaintiff, through its representative Daniel Morgan ("**Morgan**"), and DOYLE
HEATON met in November 2007 to review and discuss the disputed final accounting provided

1 by DOYLE HEATON. Morgan provided DOYLE HEATON with the accounting
2 reconciliation prepared by Plaintiff's accounting staff and made demand upon DOYLE
3 HEATON that he adjust the final accounting to allocate the additional \$2.2 million return to
4 plaintiff. DOYLE HEATON responded that he would make the adjustments.

5 12. On or about November 25, 2007, a "Settlement Agreement and Mutual Release"
6 (hereafter "**Settlement Agreement**") was entered into between DOYLE HEATON, Mardel
7 LLC, Delco, and plaintiff's predecessor in interest Centennial. A true and correct copy of the
8 Settlement Agreement is attached hereto as Exhibit A and incorporated herein by reference.

9 13. On or about December 5, 2007, as material consideration for the Settlement
10 Agreement, a "Promissory Note Secured by Deed of Trust" ("**Original Note**") in the amount of
11 \$1,069,934 was executed by HEATON. A true and correct copy of the Original Note is attached
12 hereto as Exhibit B and incorporated herein by reference. The terms and conditions of the
13 Original Note were expressly incorporated by reference into the Settlement Agreement (see ¶2.4
14 of Settlement Agreement attached hereto as Exhibit A). The release of claims contained in ¶3.1
15 of the Settlement Agreement was expressly conditioned upon satisfaction of the terms and
16 conditions set forth in the Original Note.

17 14. In December 2008, HEATON approached Morgan and asked that Morgan agree to
18 modify the terms of the Settlement Agreement and the Original Note. DOYLE HEATON made
19 certain representations and promises to Morgan including, without limitation, the following:

20 (a) Commencing February 1, 2009, DOYLE HEATON would make monthly
21 payments on the first of each month in the amount of One Thousand Three Hundred Ninety
22 Seven and 35/100 Dollars (\$1,397.35) (which sums would be applied to interest accruing)

23 (b) If the foregoing monthly payment was not made within 15 days from the first of
24 each month, the entire principal sum then unpaid would be accelerated, without demand or
25 notice, and would immediately be due and payable, plus accrued interest.

26 15. Pursuant to the above referenced representations and promises, on January 19, 2009,
27 DOYLE HEATON and Plaintiff executed a "Note Modification Agreement" which, among
28 other things, reduced the principal balance of the Original Note to \$827,612. A true and correct

1 copy of the Note Modification Agreement is attached hereto as Exhibit C and incorporated
2 herein by reference.

3
4 16. On information and belief, Plaintiff alleges that at all relevant times mentioned
5 herein, a unity of interest and ownership existed between Mardel LLC and Delco, on the one
6 hand, and DOYLE HEATON, on the other hand, such that any individuality and separateness
7 between Mardel LLC and Delco, on the one hand, and DOYLE HEATON ceased, and Mardel
8 LLC and Delco are the alter egos of DOYLE HEATON. Adherence to the fiction of the separate
9 existence of Mardel LLC and Delco as entities distinct from DOYLE HEATON would permit an
10 abuse of the corporate privilege, sanction fraud, promote injustice and result in an inequitable
11 result.

12 17. On or about October 16, 2009, Plaintiff initiated a Complaint (“**State Court**
13 **Complaint**”), Case number CIV 095267, for Damages for Breach of Contract, Fraud in the
14 Inducement, Rescission, Intentional Misrepresentation, etc. in the Superior Court, State of
15 California, County of Marin. Plaintiff sought and obtained a pre-judgment Writ of Attachment
16 (“**Attachment Order**”) in the State Court Action on October 20, 2009, attaching the property
17 specified in the Attachment Order. A copy of the Attachment Order is attached hereto as Exhibit
18 D and is incorporated herein by reference.

19 **FIRST CAUSE OF ACTION**

20 **(Fraud: 11 USC §523 (a) (2))**

21 18. Plaintiff incorporates herein by reference each of the allegations contained in
22 Paragraphs 1 through 17 above, as though fully set forth herein.

23 19. When DOYLE HEATON made the representations and promises to Morgan that he
24 would pay plaintiff the agreed sums, as alleged hereinabove, and as reflected in the Settlement
25 Agreement, the Original Note and the Note Modification Agreement (sometimes referred to
26 collectively as the “Notes”), DOYLE HEATON knew that those representations and promises
27 were false. The true facts were that DOYLE HEATON’s undisclosed agenda was to dissuade
28 plaintiff from suing him to collect the then calculated \$2.2 million debt (such amount is now
calculated at \$2,347,912), to position himself to pay Plaintiff as little as possible while

1 forestalling a formal suit by plaintiff, to later default on the Notes once he had reorganized his
2 broader financial affairs, and then, if necessary, seek to discharge the obligations owed to
3 plaintiff through bankruptcy.

4 20. When DOYLE HEATON made the false representations as alleged hereinabove, he
5 was acting in a fiduciary capacity, he did so with the intention to deceive and defraud plaintiff
6 and to induce plaintiff to act in reliance on these representations in the manner hereinafter
7 alleged, and with the expectation that plaintiff would so act.

8 21. Plaintiff was ignorant of the falsity of DOYLE HEATON's representations and
9 believed them to be true. In reliance on the DOYLE HEATON's false representations, Plaintiff
10 was induced to and did agree to forego legal action against DOYLE HEATON for his
11 mismanagement of the Atherton Ranch LLC and the Atherton Ranch Project (and funds relating
12 thereto) and to enter into the Settlement Agreement which included the resolution of the
13 accounting and diversion issues with the creation of the Original Note. In further reliance on
14 DOYLE HEATON's further false representations, and DOYLE HEATON's concealment of the
15 true facts and his intentions, Plaintiff was induced to and did agree to replace the Original Note
16 with the Note Modification Agreement. Had plaintiff known the actual facts and HEATON's
17 true intentions, Plaintiff would not have agreed to enter into the Settlement Agreement, the
18 Original Note and the Note Modification Agreement to further reduce DOYLE HEATON's
19 obligation to plaintiff.

20 22. As a proximate result of DOYLE HEATON's fraudulent conduct as herein alleged,
21 Plaintiff was damaged by the approximate sum of \$2,347,912, plus interest on said sum, which is
22 the unpaid balance of what HEATON owes plaintiff from the Atherton Ranch Project.
23 The aforementioned conduct of DOYLE HEATON constituted an intentional misrepresentation,
24 deceit, and concealment of facts known only to DOYLE HEATON, with the intention on his
25 part of depriving plaintiff of its financial return on the Atherton Ranch Project and otherwise
26 causing injury to Plaintiff.

27 23. In doing the things alleged hereinabove, DOYLE HEATON has acted with
28 oppression, fraud and/or malice. DOYLE HEATON's conduct was despicable, depriving
plaintiff of property or legal rights or otherwise causing plaintiff's injury and damages, and
subjecting plaintiff to a cruel and unjust hardship in conscious disregard of plaintiff's rights.

1 DOYLE HEATON's actions were willful, wanton, malicious and oppressive, and justify the
2 award of exemplary and punitive damages in a sum according to proof at trial.

3 **SECOND CAUSE OF ACTION**

4 **(Fraud: 11 USC§ 523(a)(4))**

5 24. Plaintiff incorporates herein by reference each of the allegations contained in
6 Paragraphs through 23 above, as though fully set forth herein.

7 25. As alleged further hereinabove, DOYLE HEATON, in his fiduciary capacity as the
8 manager of the Atherton Ranch Project, engaged in fraudulent conduct as the manager of the
9 Atherton Ranch Project which included, among other things, intentionally providing plaintiff
10 with a knowingly false final accounting for the Atherton Ranch Project costs and income due to
11 the respective owners, DOYLE HEATON and Plaintiff. The foregoing fraudulent conduct
12 involved, among other things, improper and unauthorized management fees claimed by
13 HEATON, interest charges to the Atherton Ranch LLC for HEATON's personal debt service,
14 unauthorized cash payments to third parties, and the sale of a home within the Atherton Ranch
15 Project to DOYLE HEATON's son at a substantial discount.

16 26. When DOYLE HEATON provided the foregoing referenced accounting, DOYLE
17 HEATON knew that the accounting was false. The true facts were that DOYLE HEATON
18 intentionally and knowingly embezzled and/or converted approximately \$2,347,912.

19 27. Plaintiff was initially ignorant of the falsity of DOYLE HEATON's final
20 accounting and believed them to be true, until Plaintiff did its own accounting resulting in the
21 Settlement Agreement. Based upon rescission of the Settlement Agreement as alleged above,
22 Plaintiff now sues DOYLE HEATON for damages arising out of the Atherton Ranch Project in
23 the approximate sum of \$2,347,912, plus interest on said sum and attorney's fees and costs,
24 which is the unpaid balance of what HEATON owes plaintiff from the Atherton Ranch Project.

25 28. The aforementioned conduct of DOYLE HEATON constituted an intentional
26 misrepresentation, deceit, and concealment of facts known only to DOYLE HEATON, with the
27 intention on his part of depriving plaintiff of its financial return on the Atherton Ranch Project
28 and otherwise causing injury to Plaintiff.

29. In doing the things alleged hereinabove, DOYLE HEATON has acted with
oppression, fraud and/or malice. DOYLE HEATON's conduct was despicable, depriving

1 Plaintiff of property or legal rights or otherwise causing plaintiff's injury and damages, and
2 subjecting plaintiff to a cruel and unjust hardship in conscious disregard of plaintiff's rights.
3 DOYLE HEATON's actions were willful, wanton, malicious and oppressive, and justify the
4 award of exemplary and punitive damages in a sum according to proof at trial.

5 **THIRD CAUSE OF ACTION**

6 **(Fraud: 11 USC§ 523(a)(4))**

7 30. Plaintiff incorporates herein by reference each of the allegations contained in
8 Paragraphs 1 through 29 above, as though fully set forth herein.

9 31. DOYLE HEATON, as the manager of the Atherton Ranch Project, owed a
10 fiduciary duty to plaintiff (and/or its predecessor in interest) and Morgan. The fiduciary duty
11 owed by DOYLE HEATON is the highest duty imposed by law and includes the highest duty of
12 loyalty, utmost honesty, good faith and integrity in the management of the Atherton Ranch
13 Project finances.

14 32. DOYLE HEATON breached his fiduciary duty based upon his conduct, acts and
15 omissions as set forth hereinabove.

16 33. As a proximate result of DOYLE HEATON's breach of fiduciary duty as herein
17 alleged, Plaintiff was damaged by the approximate sum of \$2,347,912, plus interest on said sum,
18 which is the unpaid balance of what DOYLE HEATON owes Plaintiff from the Atherton Ranch
19 Project.

20 **FOURTH CAUSE OF ACTION**

21 **(Conversion: 11 USC § 523 (a)(6))**

22 34. Plaintiff incorporates herein by reference each of the allegations contained in
23 Paragraphs 1 through 33 above, as though fully set forth herein.

24 35. At all relevant times throughout the Atherton Ranch Project, and particularly,
25 without limitation, in January 2007, DOYLE HEATON intentionally took certain allocations of
26 profit and monies that Plaintiff's predecessor in interest was entitled to receive pursuant to the
27 terms of the Operating Agreement for the Atherton Ranch LLC, and converted the monies and
28 allocation of profits to HEATON's own use and the beneficial use of third parties including,
without limitation, unauthorized cash payments to himself and to third parties, and payment of
interest charges for DOYLE HEATON's personal debt service.

1 36. As a proximate result of DOYLE HEATON's conversion as herein alleged,
2 Plaintiff was damaged by the approximate sum of \$2,347,912, plus interest on said sum, which is
3 the unpaid balance of what HEATON owes plaintiff from the Atherton Ranch Project.

4 37. In doing the things alleged hereinabove, DOYLE HEATON has acted with
5 oppression, fraud and/or malice. DOYLE HEATON's conduct was despicable, depriving
6 Plaintiff of property or legal rights or otherwise causing plaintiff's injury and damages, and
7 subjecting plaintiff to a cruel and unjust hardship in conscious disregard of plaintiff's rights.
8 DOYLE HEATON's actions were willful, wanton, malicious and oppressive, and justify the
9 award of exemplary and punitive damages in a sum according to proof at trial.

10 **FIFTH CAUSE OF ACTION**

11 **(Fraud: 11 USC § 523 (a)(2))**

12 38. Plaintiff incorporates herein by reference each of the allegations contained in
13 Paragraphs 1 through 37 above, as though fully set forth herein.

14 39. At all relevant times throughout the Atherton Ranch Project, and particularly,
15 without limitation, in January 2007, DOYLE HEATON intentionally took certain allocations of
16 profit and monies that Plaintiff's predecessor in interest was entitled to receive pursuant to the
17 terms of the Operating Agreement for the Atherton Ranch LLC, and converted the monies and
18 allocation of profits to HEATON's own use and the beneficial use of third parties including,
19 without limitation, unauthorized cash payments to himself and to third parties, and payment of
20 interest charges for DOYLE HEATON's personal debt service. These actions by DOYLE
HEATON were taken without Plaintiff's knowledge or consent.

21 40. The actions taken by DOYLE HEATON in Paragraph 39 were fraudulent and
22 designed to deceive Plaintiff and did deceive Plaintiff.

23 41. Plaintiff relied on the express and implied representations that at all times DOYLE
24 HEATON was acting properly in carrying out his duties and obligations in respect to the
25 Atherton Ranch Project.

26 42. Plaintiff has suffered damages due to the false and fraudulent actions taken by
27 DOYLE HEATON.
28

1 **SIXTH CAUSE OF ACTION**

2 **(Constructive Trust: Based upon Fraud and Breach of Fiduciary Duty)**

3 43. Plaintiff incorporates herein by reference each of the allegations contained in
4 Paragraphs 1 through 42 above, as though fully set forth herein.

5 44. Plaintiff is informed and believes and thereupon alleges that HEATON:
6 (1) improperly, and without authorization in violation of the Operating Agreement of Atherton
7 Ranch LLC, used the Atherton Ranch LLC line of credit to purchase interests in other real
8 property and/or pay for entitlements on other real property; and (2) intentionally took certain
9 allocations of profit and monies that Plaintiff's predecessor in interest was entitled to receive
10 pursuant to the terms of the Operating Agreement for the Atherton Ranch LLC, and used a
11 portion of such converted monies for his own use, including to purchase interests in other real
12 property or assets. Plaintiff is investigating to determine the specific identification of these real
13 properties and assets, and shall amend this Complaint accordingly to seek a constructive trust
14 against those properties.

15 45. By virtue of DOYLE HEATON's wrongful acts, DOYLE HEATON holds said
16 interests in real property and assets as a constructive trustee for plaintiff.

17 **SEVENTH CAUSE OF ACTION**

18 **(Equitable Lien: Based upon Fraud and Breach of Fiduciary Duty)**

19 46. Plaintiff incorporates herein by reference each of the allegations contained in
20 Paragraphs 1 through 45 above, as though fully set forth herein.

21 47. Plaintiff is informed and believes and thereupon alleges that HEATON:
22 (1) improperly, and without authorization in violation of the Operating Agreement of Atherton
23 Ranch LLC, used the Atherton Ranch LLC line of credit to purchase interests in other real
24 property and/or pay for entitlements on other real property; and (2) intentionally took certain
25 allocations of profit and monies that Plaintiff's predecessor in interest was entitled to receive
26 pursuant to the terms of the Operating Agreement for the Atherton Ranch LLC, and used a
27 portion of such converted monies for his own use, including to purchase assets and interests in
28 other real property. Plaintiff is investigating to determine the specific identification of these real
properties and assets. To the extent that HEATON has done so, this Court should impose an
equitable lien, against those assets and properties.

1 **EIGHTH CAUSE OF ACTION**

2 **(Accounting)**

3 48. Plaintiff incorporates herein by reference each of the allegations contained in
4 Paragraphs 1 through 45 above, as though fully set forth herein.

5 49. As further alleged further hereinabove, DOYLE HEATON owed a fiduciary duty to
6 plaintiff's predecessor . in connection with the management of the Atherton Ranch LLC and the
7 Atherton Ranch Project. DOYLE HEATON's fiduciary duty and obligations under the Atherton
8 Ranch LLC Operating Agreement included, without limitation, a duty of utmost care and loyalty
9 to Plaintiff's predecessor and to Morgan and a duty to protect their financial interests and
10 property in connection with the Atherton Ranch Project.

11 50. As alleged further hereinabove, DOYLE HEATON breached his fiduciary duty in
12 the course of the management of the Atherton Ranch Project by embezzling and/or converting
13 monies owed to plaintiff for DOYLE HEATON's own use.

14 51. Plaintiff alleges that the amount of money due to plaintiff is approximately
15 \$2,347,912. However, in order to determine the exact amount of money owed to plaintiff,
16 Plaintiff is entitled to an accounting from DOYLE HEATON in connection with his
17 management of the Atherton Ranch LLC and the Atherton Ranch Project.

18 **WHEREFORE, Plaintiff prays for judgment as follows:**

- 19 1. For a determination that the debt owed to Plaintiff by Debtors is deemed non-
20 dischargeable .
- 21 2. That judgment be entered in favor of the Plaintiff in accordance with proof presented
22 in these proceedings or in accordance with any judgment entered against Debtors in
23 the State Court Proceeding and that MARY HEATON'S interest in the Assets be
24 subject to any such judgment.
- 25 3. That if Plaintiff is given authority from this court to finalize its judgment in the State
26 Court Action, that this action be stayed in this Court, pending finalization of the State
27 Court Action so that any judgment obtained can be entered in these proceedings.
28

- 1 4. For pre-judgment interest in accordance with applicable law.
- 2 5. That Debtors be required to provide an accounting to Plaintiffs for all sums received
- 3 by them or their related entities or alter egos, related to the Atherton Ranch Project.
- 4 6. That any funds or any of the Assets held by Debtors or their successors or alter egos,
- 5 that can be traced to funds or property due to Plaintiff due to DOYLE HEATON'S
- 6 actions specified in this Complaint, be held in constructive trust by DEBTORS for
- 7 Plaintiff.
- 8
- 9 7. That any funds or any of the Assets held by Debtors or their successors or alter egos,
- 10 that can be traced to funds or property due to Plaintiff due to DOYLE HEATON'S
- 11 actions specified in this Complaint, be imposed with an equitable lien in favor of
- 12 Plaintiff.
- 13
- 14 8. For exemplary damages in an amount according to proof at trial;
- 15 9. For rescission of the Settlement Agreement, Original Note and Note Modification
- 16 Agreement.
- 17 10. That Plaintiff be awarded attorneys' fees and costs.
- 18 11. For such other relief is as just.
- 19

20 SCHEER LAW GROUP, LLP

21 DATED: February 26, 2010

22 /s/ SPENCER P. SCHEER
23 #107750